Held, that the writ be refused. *U. S. ex rel. Alaska Smokeless Coal Co.* v. *Lane, Sec. of the Interior*. U. S. Sup. Ct., October Term, 1919, No. 36.

For a discussion of this case, see NOTES, p. 462, *supra*.

SALES — AFTER-ACQUIRED PROPERTY — FUTURE CROPS — RETENTION OF POSSESSION BY VENDOR. — The defendant sold the plaintiff all the beans to be planted and raised that year on the defendant's land. It was expressly stated that title was to pass at once. After the beans were harvested, the defendant mortgaged the crop and transferred possession to the mortgagee. The buyer sued the seller and the mortgagee for the beans. *Held*, that title had passed to the plaintiff subject to the mortgagee's lien. *Hamilton* v. *Klinke*, 183 Pac. 675 (Cal.).

The court's decision was based upon the doctrine of potential possession. "In certain cases a seller may transfer title to goods which he does not then own," on the theory that he is already potential owner. *Grantham* v. *Hawley*, Hob. 132; *Briggs* v. *United States*, 143 U. S. 346. See WILLISTON ON SALES, §§ 133–137. In practice this doctrine has been limited to crops and the young of animals. By the application of this doctrine, when such property comes into existence title passes to the buyer free from any defects arising since the bargain. *Grantham* v. *Hawley*, *supra*. Because of its great hardship upon innocent third parties, arbitrary limitations of the doctrine have been laid down in several states. *Shaw* v. *Gilmore*, 81 Me. 396, 17 Atl. 314. See 1913 MINN. GEN. STAT., § 6980. In England and in some states, except as applied to mortgages, it has been abolished. See SALE OF GOODS ACT, 56 & 57 VICT., c. 71, § 5 (3). See also UNIFORM SALES ACT, § 5 (3). In those states where the doctrine is still upheld, through the intervention of another rule, a prior purchaser's title is defeated by a sale and delivery by the seller to a subsequent purchaser. See WILLISTON'S CASES ON SALES, 3 ed., 384, note. See also Samuel Williston, "Transfers of After-Acquired Personal Property," 19 HARV. L. REV. 569, 570. The principal case illustrates this safeguard against the hardships of the doctrine.

SALES — RISK OF LOSS — TIME OF PASSING OF TITLE — C. I. F. CONTRACTS. — The seller in Halifax contracted to sell to the buyer in Philadelphia goods c. i. f. Philadelphia. The quoted price included the cost, insurance, and freight. The goods were destroyed in transit by a submarine. *Held*, that the loss falls on the buyer. *Smith Co.* v. *Marano*, 76 Leg. Int. 768.

Unless a contrary intention appears, if the contract requires the seller to deliver at a distance, or to pay the freight, the property does not pass until the goods have been delivered to the buyer. See UNIFORM SALES ACT, § 19, subd. 5. But a c. i. f. contract does not come within this section. See WILLISTON ON SALES, 408. While it might well be considered the same as a contract f. o. b. destination, it is treated more like a sale f. o. b. point of origin. See *Mee* v. *McNider*, 109 N. Y. 500, 503. This doctrine must rest on the theory that the obligation of a c. i. f. contract is met by the delivery to the buyer of the bill of lading, invoice, and policy of insurance. *Horst Co.* v. *Biddell Bros.*, [1911] 1 K. B. 214, aff'd [1912] A. C. 18. See *Karburg & Co.* v. *Blythe, Green, Jourdain & Co.*, [1915] 2 K. B. 379, 388. It is not clear from the cases whether the property in the goods passes at the time of the delivery of the goods to the carrier or at the time of the delivery of the documents to the buyer. See *Mee* v. *McNider*, *supra; Karburg & Co.* v. *Blythe & Co.*, [1916] 1 K. B. 495, 514; *Groom* v. *Barbour*, [1915] 1 K. B. 316, 324. But it is unnecessary to decide this point, because it is clear that the risk throughout is on the buyer. *Manbre Saccharine Co.* v. *Corn Products Co.*, [1919] 1 K. B. 198. Therefore, if the seller has followed his authority as to the insurance, and the goods are destroyed in transit by the public enemy, the seller is not thereby precluded from making a valid tender of

the documents, although he knows at the time that the goods are not in existence; and the buyer is not relieved from the liability to pay the price, although the insurance does not cover war risk and he has no recovery for the loss. *In re Weis & Co.* v. *Credit Colonial et Commercial (Antwerp)*, [1916] 1 K. B. 346.

SALVAGE — WHAT CONSTITUTES SALVAGE SERVICE. — The plaintiff schooner transferred passengers and baggage from the defendant ship which had run aground. The list of the ship and the number of passengers aboard her created a reasonable apprehension of danger although the rescue could have been accomplished without the aid of the schooner. *Held*, that the service constituted salvage. *Clayoquot Sound Canning Co.* v. *S. S. Princess Adelaide*, 48 Dom. L. R. 478.

The defendant tug had her rudder carried away in a heavy gale. In response to distress signals the plaintiff trawler made fast and brought the tug safely into port. *Held*, that the service constituted salvage. *The Andrew Kelly* v. *The Commodore*, 48 Dom. L. R. 213.

For a discussion of these cases, see NOTES, p. 453, *supra*.

SPECIFIC PERFORMANCE — INADEQUACY OF CONSIDERATION AS A DEFENSE — CONTRACT TO DEVISE IN CONSIDERATION OF PERSONAL SERVICES. — The petitioner and his uncle had contracted that, in consideration of personal services to be performed by the petitioner during the uncle's lifetime, the latter would make a will and leave his entire property to the petitioner. The bill alleged complete performance by the petitioner, the uncle's death without having made a will, and prayed specific performance of the agreement. The defendant filed a demurrer, on the ground that the petition did not specify the value of the estate, or the value and extent of the services alleged to be the supporting consideration of the contract. A Georgia statute provides that "mere inadequacy of price . . . may justify a court in refusing to decree a specific performance." (1910 GA. CIV. CODE, § 4637.) *Held*, that the demurrer be sustained. Potts *v.* Mathis, 100 S. E. 110 (Ga.).

A valid contract to devise realty in consideration of personal services will be specifically enforced against the heir or devisee where the promisee has fully performed. *Howe* v. *Watson*, 179 Mass. 30, 60 N. E. 415; *Burdine* v. *Burdine's Ex'r*, 98 Va. 515, 36 S. E. 992; *Brinton* v. *Van Cott*, 8 Utah, 480, 33 Pac. 218. See 30 HARV. L. REV. 192. See also 28 HARV. L. REV. 241–245. Although the remedy by specific performance lies within the discretion of the court, a mere inequality of price and value will not be reason for denying it. *Seymour* v. *Delancy*, 3 Cow. (N. Y.) 445; *Lawson* v. *Mullinix*, 104 Md. 156, 64 Atl. 938; *Harrison* v. *Town*, 17 Mo. 237. See 15 HARV. L. REV. 318 and 741; 27 HARV. L. REV. 288. But if the inadequacy of the consideration is so gross as to constitute great hardship, or is coupled with sharp practice or unfairness, equity will not decree specific performance. *Cox* v. *Burgess*, 29 Ky. L. Rep. 972, 96 S. W. 577; *Marks* v. *Gates*, 154 Fed. 481; *Grizzle* v. *Sutherland*, 88 Va. 584, 14 S. E. 332. The fairness of a contract to devise in consideration of personal services should be determined with reference to the breadth of the undertaking to serve, and should not be deemed unfair merely because the contract has turned out to be advantageous to one of the parties. *Warner* v. *Marshall*, 166 Ind. 88, 75 N. E. 582; *Bless* v. *Blizzard*, 86 Kan. 230, 120 Pac. 351; *Howe* v. *Watson*, 179 Mass. 30, 60 N. E. 415. Statutes in some jurisdictions provide that specific performance "cannot" be given in case the consideration be inadequate. See 1915 CAL. CIV. CODE, § 3391; 1907 MONT. REV. CIV. CODE, § 4417; 1913 SO. DAK. REV. CIV. CODE, § 2345. It has been intimated that such a statute makes inadequacy of consideration a ground for refusing specific performance apart from circumstances of hardship or unfairness. *Morrill* v. *Everson*, 77 Cal. 114,